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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:B-201642.2

DATE: April 22, 1983

MATTER OF: Four-Phase Systems, Inc.--
request for reconsideration

DIGEST:

Earlier decision denied protest that agency was procuring computing capacity in excess of its minimum needs because agency provided studies justifying needs and protester did not show that basis for needs was unreasonable. Subsequent GAO audit found that studies were erroneously performed and reached incorrect conclusions. Request for reconsideration based on that information is sustained, and prior decision is modified accordingly.

Four-Phase Systems, Inc. (Four-Phase), requests reconsideration of our decision in Four-Phase Systems, Inc., B-201642, July 22, 1981, 81-2 CPD 56, in which we denied Four-Phase's protest under request for proposals (RFP) No. DTFA01-80-R-31147 for computer systems for 10 automatic data processing centers issued by the Federal Aviation Administration (FAA), Department of Transportation.

In that decision, we considered Four-Phase's allegations that the RFP was ambiguous, that the requirements stated therein were in excess of the FAA's minimum needs, and that it did not include all costs that should be evaluated. We denied the protest on all grounds. Concerning the ground that is relevant to this request for reconsideration, we found that Four-Phase had not met its burden of showing that the FAA's justification of its minimum needs was without a reasonable basis. A contract was awarded to Small Business Systems, Inc. (SBS), on April 5, 1982.

On April 20, 1982, GAO issued a report titled "Examination of the Federal Aviation Administration's Plan for the National Airspace System--Interim Report" (AFMD-82-66), in which we examined, among other things, the FAA's justification and handling of the procurement that had been the subject of our July 22, 1981, decision. In that report, we found that the FAA had procured computing power far in excess of its needs. We recommended that FAA cancel the contract awarded to SBS.

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Based on the findings made in our interim audit report, Four-Phase requested reconsideration of our July 22, 1981, decision. Essentially, Four-Phase argues that the findings in our report meet the burden of showing that the FAA's statement of its minimum needs was unreasonable and, therefore, we should reverse our decision on that basis.

As required by section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (formerly 31 U.S.C. § 1176 (1976)), the FAA responded to the findings and recommendations of our interim audit report. Essentially, the FAA disagreed with those findings and recommendations, including the finding that it had not adequately justified its need for the computers being purchased here and the recommendation that this contract be canceled. This response was also submitted to GAO as the FAA's response to Four-Phase's request for reconsideration.

On November 24, 1982, GAO issued a report titled "Greater Emphasis On Information Resource Management Is Needed At The Federal Aviation Administration" (GAO/RCED-83-60). In appendix II of that report, GAO evaluated and responded to the FAA's response to the interim report. Essentially, GAO found that FAA's response did not provide sufficient information to justify the procurement actions and concluded that the findings and recommendations of the interim report remained valid.

Based on the factual findings and analysis set forth in the two GAO reports cited above, we find that the FAA's justification of its minimum needs in this procurement was not reasonable. We understand that several of the computer systems have been installed. However, we have been advised that the systems have been leased rather than purchased. We recommend that FAA decline to renew the leases at the end of the current lease term and that FAA not purchase the systems. We also recommend that if it is economically feasible, FAA decline delivery of computers not yet received or installed and cancel outstanding commitments. Further, we recommend that FAA carefully study its need for computing power based on realistic workload projections and alternate available sources before restating its minimum needs and conducting another procurement. Our reports suggest alternative sources for satisfying FAA's needs during the time required to implement these recommendations.

In our decision of July 22, 1981, Four-Phase's primary complaint was that the FAA was unnecessarily requiring relatively large mainframe central processing units (CPU's) in each data processing center, while its actual needs could be met by using much smaller computers at each center linked in what Four-Phase characterized as a distributed processing system. Four-Phase alleged that by doing this, the FAA restricted competition to manufacturers or vendors of large CPU's. That is, Four-Phase's complaint was that the amount of computing capacity being purchased by the FAA was in excess of its actual needs.

We then stated our standard of review in such cases, which is:

"The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208; METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. This is particularly the case when highly technical supplies or services are involved as in the case here. Therefore, our Office will not question agency decisions concerning those matters unless they are shown to be clearly unreasonable. Particle Data, Inc.; Couler Electronics, Inc., B-179762; B-178718, May 15, 1974, 74-1 CPD 257. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

"Regarding restrictions on competition, while needs should be determined so as to maximize competition, we have held that requirements which limit competition are acceptable so long as they are

legitimate agency needs and a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Educational Media Division Inc., B-193501, March 27, 1979, 79-1 CPD 204." Four-Phase Systems, Inc., supra.

The FAA argued that it had studied its needs and set them forth generally in its Management Information ADP Support Plan of February 1, 1979. That plan had been presented to the General Services Administration in support of FAA's request for a delegation of procurement authority, which was granted. According to FAA, its assessment of its workload and trends of workload growth resulted in specifying the large amount of computing capability set forth in the RFP. We found that FAA had provided an apparently reasonable basis for its needs and that Four-Phase had not carried its burden of showing that the basis was clearly unreasonable. As is our longstanding policy, our Office did not perform an independent investigation to verify Four-Phase's allegations as a part of the bid protest process.

However, our April 1982 interim report, issued in response to a congressional request independent of Four-Phase's bid protest, has verified Four-Phase's allegations that the FAA does not need the computing capacity that it is procuring. For example, the workload data in FAA's February 1979 study which was used to justify the procurement was both out of date and unsubstantiated, according to our report. The workload statistics were compiled in 1978 and have not been updated since. We studied the workload for three regions in 1981 and found that the batch processing workload had declined by an average of 31 percent from the 1978 levels. The reason for the large reduction was the introduction of a centralized payroll system. Also, the batch processing workload is likely to decline further in the future as a result of the planned introduction of a centralized accounting system to be processed on FAA's Aeronautical Center computer and not on the regional computers.

In addition to finding that the large computing capacity being procured by FAA was not necessary due to declining workloads, we questioned whether the procurement was necessary at all. GAO suggested that the regional

batch processing workload could be transferred to the large mainframe computer facility at FAA's Aeronautical Center, which will be significantly underutilized when the computer is replaced, which is presently occurring. FAA's 1979 study considered and rejected this alternative. We found that the analysis which led to this rejection was seriously flawed, rendering its conclusion invalid.

In its response to the interim report and to the request for reconsideration, FAA attempted to rebut these findings and conclusions. Generally, FAA claims to have monitored its changing workload during the preparation and refinement of the RFP. Specifically, FAA admits that payroll and accounting batch processing and total batch processing have declined, but claims that batch processing has increased in areas other than payroll and accounting. FAA also argues that the size of the system needed is largely a function of the number of terminal users and that it is acquiring and plans to use more terminals. Concerning the use of the Aeronautical Center computer, FAA basically contends that regional batch processing is more economical to perform in the regions. Also, FAA notes that the GAO audit results concerning excess capacity were based on the size of the replacement computer, which has more excess capacity, while FAA's study was based on the current computer, since it was performed in 1979. FAA argues that its study was accurate then and remains so now.

In our November 24, 1982, report we responded to FAA's comments. Essentially, we concluded that FAA's response was unpersuasive, and we affirmed our earlier finding. We also stated that FAA's statement concerning the number of terminals leading to increased computer usage was not based on a sound analysis. FAA's study was nothing more than an inventory of existing terminals that had been placed over time to accommodate individual user requests. FAA told our staff that it had not assessed actual terminal use, but that it had only compiled numbers. Since it is use, not numbers, that determines computer usage, this study was not persuasive.

Since we have found that FAA's basis for the definition of its minimum needs is not reasonable and that the stated requirements do not represent its true minimum needs, we sustain Four-Phase's request for reconsideration and modify our previous decision. We recommend the corrective action

discussed above. Since we have reached this conclusion, we need not consider additional allegations raised by Four-Phase as a result of information obtained under the Freedom of Information Act.

By letter of today, we are advising the Secretary of Transportation of our recommendations.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

for *Harry D. Van Cleave*
Comptroller General
of the United States